tend to interest;[7] but these apparent exceptions arose under a peculiar statute, which provided not for the payment of all corporate debts, but for the redemption of unpaid corporate bills at par, and hence could not be fairly construed to contemplate interest, of which no mention was made.[8] The rule laid down in *Lamar* v. *Taylor* seems, therefore, to stand unchallenged, and is certainly supported by an overwhelming preponderance of judicial opinion.[9]

Moreover, where a stockholder refuses to pay on demand and causes a creditor delay in enforcing his rights, it is held in most jurisdictions that interest will run on the claim against the shareholder, even though this results in increasing his total liability beyond the amount fixed by law.[10] Several courts have denied this principle on the ground that the liability of the stockholders is to be sought in the statute alone, and the latter must be strictly construed.[11] On the other hand, the rule that when a stockholder contests the creditors' claims interest will accrue on the amount of his obligation from the date of the commencement of the action against him,[12] or in the case of national banks from the date fixed for payment by the Comptroller of the Currency,[13] or, in short, from the moment the liability becomes liquidated,[14] seems only just and reasonable. If the stockholder pays his liability as soon as the amount thereof is ascertained, he obtains a complete discharge;[15] and interest, even when it is in excess of the fixed limit, is imposed solely in order to compensate the creditors for the loss of the use of their money.[16] It would seem, therefore, that the statutes imposing this liability are of a compensatory rather than of a penal nature, and consequently may be broadly construed.

ADMISSION OF DYING DECLARATIONS.—Dying declarations were admitted originally in all cases, civil or otherwise; there was even no distinction made between different kinds of criminal actions.[1] Their admission is not considered to be in conflict with the general rule of evidence which excludes all hearsay except where the necessity of the case demands better evidence or where the particular circumstances are such

[7]Crease *v.* Babcock (Mass. 1845) 10 Metc. 525, 568; Grew *v.* Breed (Mass. 1845) 10 Metc. 569, 577.

[8]See note to Flynn *v.* American Banking & Trust Co. (Me. 1908) 19 L. R. A. [N. S.] 428, 430.

[9]Richmond *v.* Irons (1887) 121 U. S. 27, 63; Wheeler *v.* Millar (1882) 90 N. Y. 353; Cumberland Lumber Co. *v.* Clinton Hill Lumber Co. (1903) 64 N. J. Eq. 521.

[10]4 Thompson, Corporations (2nd ed.) § 4849; Burr *v.* Wilcox (1860) 22 N. Y. 551; Mason *v.* Alexander (1886) 44 Oh. St. 318, 336; Millisack *v.* Moore (1898) 76 Mo. App. 528.

[11]Cole *v.* Butler (1857) 43 Me. 401; Sackett's Harbour Bank *v.* Blake (S. C. 1851) 3 Rich. Eq. 225; Adams *v.* Clark (1906) 36 Colo. 65; Munger *v.* Jacobsen (1881) 99 Ill. 349.

[12]Ramsden *v.* Keene Bank (C. C. A. 1912) 198 Fed. 807; Handy *v.* Draper (1882) 89 N. Y. 334.

[13]Casey *v.* Galli (1876) 94 U. S. 673.

[14]See Nat. Commercial Bank *v.* McDonnell (1890) 92 Ala. 387.

[15]1 Cook, Corporations (6th ed.) § 225 (d).

[16]See Brainard *v.* Jones (1858) 19 N. Y. 35.

[1]1 Greenleaf, Evidence, § 156a; 2 Wigmore, Evidence, § 1431.

as to afford a presumption that the hearsay evidence is true.[2] They were received it seems from necessity, to prevent a failure of justice, on the theory, founded on religious belief, that a dying man would speak the truth.[3] In the minds of the common law judges, an oath received its sanction because of the practically universal belief in a system of future rewards and punishments, and this belief was a necessary qualification to testifying. Whenever it appeared that a person was without a sense of accountability due to a defect of religious sentiment, whether from infidelity or tender age or imbecility, he was incompetent to testify, and his dying declarations were similarly inadmissible.[4] It was also necessary that the declarant be at the time under a fixed conviction that death was impending and certain to follow immediately,[5] and that the declaration be made under such circumstances as to exclude any supposition that it was actuated by malice, revenge, or any other motive which would tend to a misrepresentation of the facts.[6]

By the modern limitations upon the rule, declarations made *in articulo mortis* are inadmissible either in civil or criminal actions, with the single exception of cases of homicide where the death of the declarant is the subject of the charge,[7] and in some jurisdictions where the declarant was killed by the same act which caused the death under investigation.[8] The soundness of this modern limitation, however, has been questioned by learned writers, and although some lend support to abrogating the rule even in criminal actions, others favor extending it to every action. The recent case of *Thurston* v. *Fritz* (Kan. 1914) 138 Pac. 625, follows this latter tendency, and the court of its own accord, not guided by any statute, refused to confine the admission of dying declarations to criminal cases.

The view that dying declarations should be denied admission in any form rests principally upon the assumption that growing disbelief and changes in religious teachings rob the obligation to veracity of most of the strength it had,[9] and that, therefore, dying declarations should

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[2]See Westfield *v.* Warren (1824) 8 N. J. L. 306, 309; Cornelius *v.* State (1852) 12 Ark. *782, *804; South-West School District *v.* Williams (1881) 48 Conn. 504. It is well settled that the admission in evidence of dying declarations is not an infringement upon the constitutional right of the accused to be confronted by a witness testifying against him. People *v.* Corey (1898) 157 N. Y. 332; Green *v.* State (1880) 66 Ala. 40.

[3]4 Chamberlayne, Evidence, § 2815.

[4]Rex *v.* Pike (1829) 3 C. & P. 598; see State *v.* Elliott (1877) 45 Ia. 486.

[5]State *v.* Knoll (1904) 69 Kan. 767; Collins *v.* People (1902) 194 Ill. 506.

[6]Tracy *v.* People (1880) 97 Ill. 101. The obvious distinction between statements as part of the *res gestae* and dying declarations should be kept in mind. *Cf.* Healy *v.* People (1896) 163 Ill. 372.

[7]4 Chamberlayne, Evidence, §§ 2823, 2825; see exhaustive note to Worthington *v.* State (Md. 1901) 56 L. R. A. 353. The declaration must concern facts leading up to or causing the injurious acts which resulted in the declarant's death. People *v.* Smith (1902) 172 N. Y. 210, 242; State *v.* O'Shea (1899) 60 Kan. 772.

[8]11 Columbia Law Rev. 375.

[9]4 Chamberlayne, Evidence, § 2819; see article by Wilbur Larremore in 41 American Law Rev. 660.

not have equal weight at least with the testimony of an unimpeached witness, and should be received with great caution, if at all.[10] Accordingly, many States have provided by statute that the religious sanction, while still material in determining the weight and effect to be given, shall no longer be a condition to its admission.[11] It is also urged that not only are dying declarations not spontaneous outcries and not likely to express an honest belief as to what happened at the moment, but they are statements usually made after ample reflection, colored and perhaps innocently exaggerated by an overwrought condition of the mind. A supposed lack of administrative necessity in other cases and a distrust of the probative force of the dying declaration led to restricting the rule to homicide cases only.[12]

On the other hand, there are very cogent reasons in favor of extending the admission of dying declarations to all classes of cases. The fear of impending death would seem to be a very powerful incentive to truth,[13] whether the theory of admission rests upon religion or upon a physical revulsion experienced at the time of death. Even if it be true that necessity is the only ground for their admission to-day,[14] it certainly seems that the modern rule rests upon an illogical assumption that it is not as important to punish robberies and other crimes as homicides.[15] The fear that skepticism will in some cases render the statements unreliable could very well be taken into account by the jury in weighing the full effect to be given to each declaration.[16]

REGULATION OF RATES OF PUBLIC SERVICE CORPORATIONS.—It is no longer a matter of dispute that the establishment of reasonable rates is a function of the legislature rather than of the judiciary[1] whether the rates are prescribed directly or through commissions,[2] and that their constitutionality under the due process of law clause of the Fourteenth Amendment is subject to review by the courts.[3] This power was recognized as the economic substitute for competition in an ancient rule of the common law which declared that a person engaged

[10]See 41 American Law Rev., *supra;* Pyle *v.* State (1908) 4 Ga. App. 811.

[11]See People *v.* Sanford (1872) 43 Cal. 29; State *v.* Elliott, *supra;* State *v.* Ah Lee (1880) 8 Ore. 214.

[12]See 41 American Law Rev., *supra.*

[13]Parker *v.* State (1909) 165 Ala. 1; Hill *v.* State (1871) 41 Ga. 484.

[14]State *v.* Knoll, *supra;* 4 Chamberlayne, Evidence, § 2812.

[15]2 Wigmore, Evidence, § 1436.

[16]See Rhea *v.* State (1912) 104 Ark. 162; Nesbit *v.* State (1871) 43 Ga. 238.

[1]See Janvrin, Petitioner (1899) 174 Mass. 514, 517; Interstate Commerce Commission *v.* Cincinnati, N. O. & T. P. Ry. (1896) 167 U. S. 479, 499.

[2]Although the exercise of this power by commissions is in the nature of legislation, it has been regarded as merely a delegation of discretionary authority to be exercised under an existing law, and is not, therefore, in conflict with the principles of American government. State *v.* Chicago, M. & St. P. Ry. (1888) 38 Minn. 281; see Knoxville *v.* Water Co. (1908) 212 U. S. 1.

[3]Chicago, M. & St. P. Ry. *v.* Minnesota (1890) 134 U. S. 418; The Minnesota Rate Cases (1912) 230 U. S. 352.